

REMARKS

Applicants are presenting this paper as a submission filed under the RCE process (37 CFR 1.114). It is the intent of the applicants to continue the prosecution of the currently pending "parent" application USSN 10/055,819 filed January 22, 2002, presumably as the same application with the same filing date. The parent application was under Final Rejection.

A two-month extension of time for applicants (who claim SMALL ENTITY status) is also being requested, as indicated on the accompanying PTO Form SB/17 (FEE TRANSMITTAL FOR FY 2003). The appropriate fee has been included in a separate check attached to PTO Form SB/17.

In this (continuing) application, applicants are requesting (re)consideration of the elected claims previously presented in the parent application, some of which have been newly amended in this submission.

Applicants wish to thank the Examiner for indicating allowable subject matter in claims 12 and 13.

CLAIM AMENDMENTS SUMMARY

The most significant change to the claims has been made in claim 1. The claim now recites that when the first and second basket assemblies are opened, are simultaneously pivotable on the cart frame by lifting and pivoting a forward portion of the lower basket assembly toward the handle upper portion so that the upper and lower basket assemblies can be simultaneously collapsed.

Applicants also present new claims 24-27. These new claims basically incorporate the recitations of claims 12 and 13, and are discussed below.

REJECTION OF CLAIMS UNDER 35 USC 103(a)**THE REJECTION OF CLAIMS 1-8, 10, 11, 14 and 17**

In the Final Rejection of the parent application (USSN 055,819), the Examiner rejected claims 1-8, 10, 11, 14 and 17 under 35 USC 103(a) as being unpatentable over the patent to Stanley (US 3,774,929 A) in view of Huffman et al. (US 3,052,484 A) and Elders (US 3,162,462 A).

With respect to claims 1, 5 and 7, the Examiner stated that Stanley disclosed a multi-level personal utility cart 10 comprising a frame 16 with handle 34 having a rearward upper portion, side portions, and a forward lower portion; a first lower basket assembly 12, 14 with open top, a second upper basket assembly 100 with open top, wherein the lower basket assembly is pivotable relative to the cart frame and can be collapsed independently onto the frame to form a substantially planar structure, as shown in Figures 1-7 of the patent. The Examiner noted that Stanley failed to disclose the upper basket as being pivotally secured to the frame, but also noted that Huffman et al. showed a cart comprising a pair of baskets 19, 20 pivotally secured to a frame, and concluded that it would have been obvious to others of the claims previously presented, and substitution/consideration of new claims 15-26 draw to one of ordinary skill in the art at the time of the invention to pivotally secure the upper basket of Stanley, as taught by Huffman et al. in order to collapse the cart for compact storage.

The Examiner also noted that neither Stanley nor Huffman et al. disclose a lower basket assembly having a door for accessing the interior of the lower basket when the

upper basket is opened, but relied on the Elders showing of a multi-level utility cart comprising an upper basket and a lower basket with a door 66 for accessing the interior of the lower basket (Figure 3) to support the Examiner's claim that providing the utility cart of Stanley with an access door when the upper basket is deployed, would have been obvious.

In addition, the Examiner noted, with respect to claims 2-4, 6, 8-11 and 17, that Stanley discloses swivel wheels or casters 38 on the lower handle portion, a vertical support member 12 with wheels 20, and front, side, and back panels on each basket assembly, wherein the back panels are a planar grillwork backbone of wires on the vertical members (noting Figures 1-7).

With respect to claim 14, the Examiner urged that Stanley discloses clips 32 for securing the lower basket, and stated "Stanley does not disclose the clips for securing the upper basket to the lower basket. It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the clips used to secure the lower basket of cart of Stanley, Huffman et al., and Elders to the upper basket for securing it to the lower basket."

Applicants respectfully traverse these rejections and request reconsideration and allowance of the rejected claims for the following reasons.

The Stanley patent, on which the rejections are principally based, discloses a personal utility cart having a frame 16 which forms part of a collapsible lower basket assembly 12, 14. A collapsible upper basket assembly 100 is supported atop the lower collapsible basket assembly.

The upper basket assembly 100 can be collapsed and folded into a planar structure which, as shown in Figure 4 of the Stanley patent, is positioned to overlie the lower basket assembly in such a manner that a forward portion is supported on the uppermost member of the forward panel of the cart and a rearward portion of the upper basket assembly 100 is engaged by a hooked portion 102 with the rear panel of the lower basket of the cart.

In applicants' cart, when the upper and lower baskets are opened, they can be simultaneously collapsed by lifting and pivoting the forward portion of the lower basket toward the handle upper portion so that the baskets are simultaneously collapsed against a portion of the frame into a compact and substantially planar structure. This is not possible with the Stanley cart, since the upper basket must be removed before the

lower basket can be collapsed. No structure is disclosed or discussed permitting a permanent connection between the upper basket 100 and the lower basket 12 in Stanley.

In applicants' cart, the upper and lower baskets are secured (ie, connected) to the frame of the cart, while in the Stanley cart, the upper basket is only hooked on the lower basket. In applicants' claim 1, it is specified that the first (i.e., the lower) and the second (i.e., the upper) baskets are pivotably secured to the cart frame.

In the Stanley patent, it is necessary to first unhook and remove the erected upper basket from its resting position atop the lower basket in order to effect the collapse of either one of the upper basket or the lower basket (see column 2, lines 33-34).

Furthermore, Stanley teaches that it is necessary to hang the collapsed upper basket from the rear wall of the shopping cart, within the lower basket of the cart, before the lower basket can be collapsed (note lines 24-29 of column 5 of Stanley).

Thus, the upper basket assembly 100 of Stanley is not pivotably secured to the frame but rather removably hooked to the rear panel of the frame, and this is not for enabling pivoting movement of the basket assembly 100 relative to the cart rear panel, but rather to provide a means of support for the rear of the upper basket assembly to counteract the weight of the basket assembly 100, especially as the front portion of the upper basket 100 gets filled with merchandise.

Moreover, the cart structure shown by Stanley does not permit simultaneous collapse of the upper and lower baskets. Nor does the cart structure of Stanley permit simultaneous collapse of the two baskets by lifting and pivoting the forward portion of the lower basket toward the upper portion of the handle of the cart.

It is for these reasons that the rejection of claims under 35 USC 103(a) as being unpatentable over the Stanley patent, regardless of (in view of) any other teachings that have been cited by the Examiner, is believed to be improper. For example, neither the upper basket or the lower compartment in the Elder cart is collapsible. Nor do the Huffman et al. or Luff patents cure the deficiencies of the Stanley teachings – in Huffman et al., the upper and lower baskets are not simultaneously collapsible as shown in Figures 1 and 2, and noted in column 2, lines 43-53, while in the collapsible cart of Luff only a single basket is disclosed.

Accordingly, withdrawal of this set of rejections is respectfully solicited, as is allowance of the claims as presently amended.

THE REJECTION OF CLAIM 15

Claim 15 was rejected under 35 USC 103(a) as being unpatentable over Stanley, Huffman et al. and Elders, as applied to claim 1 and further in view of Luff (US 3,310,317 A).

The Examiner indicated that none of the Stanley, Huffman et al. or Elders patents disclose a parallel hook member on the carts for hanging the carts when not in use, but urged that it would have been obvious to one of ordinary skill in the art to provide such hook members on the carts in view of Luff.

Applicants have scoured the Luff patent looking for the **parallel hook members on a portion of the frame for suspending the cart when the cart is collapsed.**

However, no such structure was found. Instead, the patent shows a hook 44 which engages the handle 13 to hold the cart 10 in a collapsed position (note column 2, lines 50-53).

Withdrawal of the rejection of claim 15 under 35 USC 103(a) as being unpatentable over Stanley, Huffman et al. and Elders, as applied to claim 1 and further in view of Luff (US 3,310,317 A), and allowance of claim 15, is therefore respectfully solicited.

THE REJECTION OF CLAIM 16

Claim 16 was rejected under 35 USC 103(a) as being unpatentable over Stanley, Huffman et al. and Elders, as applied to claim 1 and further in view of Sawyer et al. (US 5,901,482 A).

The Examiner indicated that none of the Stanley, Huffman et al. or Elders patents disclose tag holders on the front panels of the carts, but it would have been obvious to one of ordinary skill in the art to provide tag holders to place advertising tags on the carts in view of Sawyer et al. which discloses tag holders for attachment to a cart front panel.

The teaching of Sawyer et al. of placing tag holders on the front panels of carts adds nothing to the deficiencies of the Stanley, Huffman et al. and Elder patents (noted above) in supporting a rejection under 35 USC 103(a).

Applicants therefore respectfully solicit withdrawal of this rejection and allowance of claim 16.

CONCLUSION

For the foregoing reasons, applicants respectfully urge that the rejections of the claims as set forth by the Examiner under 35 USC 103(a) as being unpatentable over Stanley, Huffman et al., Elder and/or Luff be withdrawn, that these claims be reconsidered in view of the amendments and applicants' discussion presented above, and in the end be found to define patentably over the prior art of record.

In addition, applicants solicit entry and allowance of the new claims 24-27 presented above. New independent claim 24 recites the cart frame, the upper and lower basket assemblies, and the claim 12 recitation of slide members on the handle supporting a backbone panel. New dependent claim 25 adds the claim 13 recitation of locking protruberances on the handle side portions. New dependent claim 26 adds the recitation of a door to access the interior of the lower basket assembly. New independent claim 27 presents the recitations of claims 1, 12 and 13 in a single claim.

In conclusion, applicants respectfully request consideration and allowance of the claims in this application in view of the amendments presented, and the comments made above.

Respectfully submitted on behalf of applicants,



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